

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SYLVIA and ALEX MARTINEZ,
as Parents and Next Friends of
J.M., a minor,

Plaintiffs,

No. CV 08-896 JH/RLP

v.

THE NEW MEXICO SCHOOL FOR
THE DEAF, RONALD J. STERN, in his
individual capacity, TERRY WILDING, in
his individual capacity, and PATRICK
ERCOLINO, in his individual capacity,

Defendants.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER came before the Court on the Plaintiffs' Motion to Appoint Guardian ad Litem on behalf of J.M., the Court having reviewed the file, noting that the Defendants take no position on the Motion, and being otherwise fully advised, hereby finds:

1. At the time of the Complaint was filed, J.M. was a minor. Suit was filed by her parents, Sylvia and Alex Martinez, in their capacity as J.M.'s parents and next friends. J.M. has reached the age of eighteen (18) years, but she is incompetent to represent herself in this cause. J.M. is profoundly deaf, has a fourth grade reading comprehension level and limited life experiences, all of which combined leave her unable to fully comprehend decisions that must be made in the litigation.

2. A Guardian ad Litem should be appointed to represent J.M.'s interests in this litigation and to advise the Court in the event a settlement is reached.

3. F. Michael Hart is qualified to serve as a Guardian ad Litem in this matter.

4. As the Court appointed Guardian ad Litem, F. Michael Hart shall be deemed a party entitled to participate, to have notice of all proceedings, and to receive copies of all pleadings and correspondence among the parties.

5. The Guardian ad Litem shall have access to all medical and other records of the child, which are relevant to the issues of this case.

6. At any hearing in this case, the Guardian ad Litem will be entitled to testify as a witness or may formally report to the Court on the nature and scope of his investigation, his conclusions and his recommendations regarding both their fairness and reasonableness of any proposed settlement and the manner in which the settlement monies shall be held/used on behalf of the child.

7. The Guardian ad Litem's appointment does not contemplate representation of the child as an advocate, but only as a functionary of the Court.

8. There are strong public policy reasons to grant immunity to the Guardian ad Litem in this case, who is acting as an "arm of the Court" and is performing an essential role in this Court's administration of justice, as the Judge's assistant.

9. All immunities and privileges available to the Guardian ad Litem, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991), should be extended to the Guardian ad Litem in this matter.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED, F. Michael Hart shall be appointed Guardian ad Litem for J.M., a person deemed incompetent by reason of disability to prosecute, direct and control her own litigation, to serve as an "arm of the Court." F. Michael Hart, shall be absolutely immune from any

liability for his actions taken pursuant to this appointment, insofar as his conduct in the case is as a result of an investigation on behalf of this Court into the fairness and reasonableness of any future settlement and its effect on the minor child. This appointment of F. Michael Hart as Guardian ad litem is intended to convey upon him all of the immunities and protections allowed or provided under *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991).

IT IS FURTHER ORDERED THAT the caption be amended to read as follows:

F. MICHAEL HART, as
Guardian ad Litem for J.M.,

Plaintiff,

No. CV 08-896 JH/RLP

v.

THE NEW MEXICO SCHOOL FOR
THE DEAF, RONALD J. STERN, in his
individual capacity, TERRY WILDING, in
his individual capacity, and PATRICK
ERCOLINO, in his individual capacity,

Defendants.



JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

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Guardian ad Litem